1. S.B.Civil Second Appeal No.346/2004.
Munshi Singh and ors. vs. Mangtu Singh and ors.

2. S.B.Civil Second Appeal No.345/2004.
Munshi Singh and ors. vs. Mangtu Singh and ors.

Date : 22.3.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. D Kaushik, for the appellants.
Mr. VK Agarwal, for the respondents.

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Heard learned counsel for the parties.

These two appeals have been filed because of the reason that against the judgment and decree of the trial court dated 19.7.1999, two appeals were preferred - one by the plaintiffs and another by the original defendant Midha Singh.

The trial court vide judgment and decree dated 19.7.1999 dismissed the suit of the plaintiffs for specific performance of the contract dated 23.4.1984. However, the trial court granted money decree of Rs.20,100/- which was the consideration shown in the agreement dated 23.4.1984 for the land in question.

The plaintiffs preferred appeal for getting the decree for specific performance of contract whereas the defendant preferred appeal against the money decree passed against him.

The first appellate court decided both the appeals by common judgment and decree dated 23.7.2004 and dismissed the appeal of the plaintiffs and upheld the judgment and decree of the trial court so far as refusal of specific performance of contract is concerned. The first appellate court allowed the appeal of the defendants and dismissed the decree of the trial court granting money decree of Rs.20,100/-.

Learned counsel for the appellant vehemently submitted that the vendor – Midha Singh was defendant in the suit. He died during pendency of the suit, therefore, his legal representatives were taken on record, who are Midha Singh's daughters and Midha Singh's brother's sons. The regular first appeal against the judgment and decree of the trial court dated 19.7.1999 was preferred by Makhan Singh, Surjan Singh and Nathu Singh sons of Magar Singh on the ground that deceased Midha Singh executed will in their favour and, therefore, they stepped in the shoes of Midha Singh as heirs. They did not implead the daughters of Midha singh as parties. According to learned counsel

for the appellants, the first appeal by these appellants was not maintainable without impleading the daughters of Midha Singh, who were parties in the suit before the trial court.

Learned counsel for the appellants vehemently submitted that it is not disputed by the appellants/ plaintiffs that earlier same property was mortgaged on 28.4.1983 by the vendor in favour of the appellants but subsequent to that, an agreement for sale of the agricultural land measuring 5 bighas 5 biswas was executed by the vendor and the first appellate court committed error of law and under the influence of earlier transaction, wrongly reached to the conclusion that the agreement was fabricated and got executed by the plaintiffs when the earlier mortgage deed was got executed.

Learned counsel for the appellants also submitted that the appellants filed the suit for specific performance of contract in the year 1990 but the possession of the suit property was handed over to the appellants in pursuance of the agreement dated 23.8.1984 and it is admitted position even by the defendants that the appellants are in possession of the suit property.

I considered the submissions of learned counsel for the appellants and perused the reasons given by the

two courts below as well as the record.

The first appellate court considered the statement of P.W.2 plaintiff Munshi Singh in detail and gave cogent reason for holding that the agreement dated 23.4.1984 could not have been executed as submitted by the plaintiffs because of the very suspicious reasons. Apart from it, before the two courts below, the plaintiffs failed to prove readiness and willingness on their part to perform their part of the contract. The findings of fact on both issues – one of the appellate court about execution of the agreement dated 23.4.1984 and concurrent finding about lack of readiness and willingness on the part of the plaintiffs to perform their part of the contract, are based on appreciation of evidence and I do not find any reason to interfere in such findings of fact in second appeal.

So far as filing of appeal by the persons who were party in the suit on the strength of the will executed by the original defendant is concerned, it is a question of title and could not have been an issue because of the reason that Midha Singh's co-sharers or heirs have preferred to challenge the judgment and decree of the first appellate court.

In view of the above, I do not find any

substantial question of law involved in these appeals. Consequently, both these second appeals, having no merit, are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya